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No. 242

IN THE
Supreme Court of the United States

OCTOBER TERM, 1960

On Petition For Writ of Certiorari to The United States
Court of Appeals For The Second Circuit

THE GLIDDEN COMPANY, DURKEE FAMOUS
FOODS DIVISION,

Petitioner,

vs.

OLGA ZDANOK, JOHN ZACHARCZYK, MARY A.
HACKETT, QUITMAN WILLIAMS AND MAR-
CELLE KREISCHER,

Respondents.

**MOTION OF OHIO CHAMBER OF COMMERCE FOR
LEAVE TO FILE BRIEF AS AMICUS CURIAE**

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**MOTION FOR LEAVE TO FILE BRIEF AS AMICUS
CURIAE**

Ohio Chamber of Commerce, a corporation not for profit under the laws of the State of Ohio, respectfully moves the Court for leave to file a brief amicus curiae. The consent of the attorneys for the petitioner herein has been obtained, but the attorneys for the respondents herein refuse to consent to the filing of a brief by Ohio Chamber of Commerce as amicus curiae.

The applicant, Ohio Chamber of Commerce, has an interest in this case in that it is a membership organization composed of 3,600 members, a substantial number of which are employers of labor having collective bargaining contracts with labor organizations, which contracts almost invariably contain terms relative to seniority rights essentially identical with those involved in the contract which is the subject of this case. Further, Ohio Chamber of Commerce has as one of its objectives, the preserving for its members and others who might become attracted to the State of Ohio, conditions of employment favorable both to management and to labor. This includes the constant encouragement of the location and relocation of new industrial plants and other business installations within the State of Ohio. Thus, in the process of such location and relocation, employers with collective bargaining contracts encounter the same questions which are presented in the instant case. The decision of the Court of Appeals on these questions, if permitted to stand, would seriously interfere with the freedom of industrial movement which the economy requires and the applicant seeks to promote. The questions are: 1.) whether, in the absence of express provision to the contrary, the standard seniority provisions of collective bargaining contracts vest in the employees rights which survive and extend beyond the expiration of such contracts between employers and employees as the Court of Appeals held, and 2.) assuming *arguendo* that seniority rights may survive the effective life of a collective bargaining contract, do such rights survive the termination of employment at an abandoned plant and entitle the discharged and formerly employed person to seniority in employment at a new plant in a distant location, as the decision of the Court of Appeals implies.

The brief of the petitioner herein in the Court of Appeals discusses both of these questions; but the discussion of the second question is inadequate in that it does not consider what the contemplation of the parties must have been at the time of contracting, in the use of the word "layoff". Specifically, it does not point out that the parties in the use of the word "layoff" in connection with the granting of seniority rights, could not have contemplated a termination of employment at one location, coupled with the commencement of operations at a distant location, because such a course of events would entail the uprooting of families from their homes, their churches, their schools, their lodges, etc., and the commencement of life anew in a strange community. "Layoff" certainly has a restricted meaning, which does not embrace every termination of employment other than discharge for cause; and it seems inconceivable that termination under the circumstances of this case, as herein described, could have been thought of as a "layoff" by the contracting parties.

The applicant has no reason to believe that this argument will be expanded upon in petitioner's brief in this Court. If this Court accepts this argument, the decision of the Court of Appeals must be reversed.

Since the proceeding draws into question the constitutionality of the Act of July 28, 1953, 67 Stat. 226, Title 28 USC Section 171, an Act of Congress affecting the public interest, and neither the United States nor any agency, officer or employee thereof is a part, it is noted that Title 28 USC Section 2403 may be applicable.

No Court of the United States as defined by Title 28 USC Section 451 has, pursuant to Title 28 USC Section

2403, certified to the Attorney General the fact that the constitutionality of such Act of the Congress has been drawn in question.

Dated at Columbus, Ohio, this twenty-first day of July, 1961.

Respectfully submitted,

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